

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

IVEY AIR, INC.

Employer

and

Case 4–RC–20476

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION, LOCAL 19, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer was served with a Notice of Representation Hearing by first class mail on July 16, 2002,<sup>1</sup> scheduling a hearing for July 25.<sup>2</sup> The Regional Director also asked the Employer to submit a completed Commerce Questionnaire. Neither the Employer nor any representative of the Employer appeared at or participated in the hearing, and the Employer did not submit the Commerce Questionnaire. The Petitioner also served on the Employer a subpoena duces tecum requiring the Employer to produce at the hearing documents detailing, among other things, its purchases and revenues during the past 12 months. The Petitioner subpoenaed those documents to determine whether the Employer is an enterprise that falls within the Board's discretionary jurisdictional standards. The Employer did produce any records in response to the Petitioner's subpoena.

---

<sup>1</sup> All dates are in 2002.

<sup>2</sup> Additionally, the Hearing Officer personally spoke to the Employer's owner on July 18 and left a telephone message for him on July 23 notifying him of the hearing.

The Employer assembles, installs and services heating, ventilation and air conditioning (HVAC) systems. Its sole owner is Thomas Woods. The Employer currently employs seven sheet metal mechanics and helpers, as well as an estimator, Richard Aicher, and an office manager, Kim Conklin.

The Hearing Officer entered into evidence the most recent Dun & Bradstreet Information Report for the Employer. According to that report, the Employer is a Pennsylvania corporation with its office located at 1418 Hanford Street, Levittown, Pennsylvania. The report also states that the Employer has had annual sales revenues of \$1,000,000. The Employer's territory includes Pennsylvania, New Jersey, and Delaware. The Employer has more than 25 customers including Acme Supermarkets, the Philadelphia School District, and Sun Chemical Corporation. About 90 percent of its work is commercial, and the remainder is residential.

An employee testified as to the Employer's most recent projects, including a large job installing several hundred feet of ductwork for Modern Machine.<sup>3</sup> During July and August, two mechanics installed an exhaust ventilation system at an Acme Supermarket in New Jersey, one mechanic performed similar work for an Acme Supermarket in Delaware, and two mechanics installed air conditioning ductwork in the bathrooms of a Philadelphia public elementary school.

All of the mechanics and helpers work at jobsites in the field, except for Randall Mann, a mechanic who works in the shop fabricating sheet metal ductwork. The mechanics and helpers generally work from about 6:30 a.m. to 3:00 or 4:00 p.m., Monday through Friday. Sometimes the Employer also requires them to work overtime on weekends or early in the morning. The mechanics and helpers earn \$14 to \$19 an hour.

The Employer purchases air conditioning units manufactured by Carrier Corporation from a company in York, Pennsylvania.<sup>4</sup> According to the most recent Dun & Bradstreet Information Report, of which I take administrative notice, Carrier is a company based in Farmington, Connecticut that manufactures and sells air conditioning systems and equipment to customers throughout the world. Carrier is staffed by more than 38,000 employees and has assets of over \$9,000,000. The Board has recognized it as an employer engaged in commerce under the Act. *Carrier Corp.*, 319 NLRB 184 (1995). The Employer also buys supplies and equipment from Penn Ventilator, ABCO, Lyon Conklin, and Pierce Philips.<sup>5</sup> The Employer's equipment includes power tools, hammers, other standard sheet metal mechanic tools, a plasma machine, six or seven vans, and several large trucks.

In *Tropicana Products*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which, "an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled and held,

---

<sup>3</sup> The record does not indicate where Modern Machine is located.

<sup>4</sup> The employee witness referred to this supplier as "Carrier Trane." Trane is the name of another large air conditioning manufacturer.

<sup>5</sup> The record indicates that Pierce Phillips is located in Philadelphia but does not indicate the location of the other suppliers.

demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards." By its failures to appear at the hearing, submit the Commerce Questionnaire, and supply documents required by the Petitioner's subpoena, I find that the Employer's refusal to provide information is sufficient to invoke the *Tropicana* rule. See *Continental Packaging*, 327 NLRB 400, 401 (1998); *Quality Motels*, 194 NLRB 1035, 1036-37 (1972).

The foregoing evidence demonstrates that the Employer is engaged in interstate commerce sufficient to satisfy the Board's statutory jurisdiction requirement. The record establishes that the Employer regularly employs at least nine employees, performs work in three states, and recently derived \$1,000,000 in annual sales. The Employer purchased and received goods indirectly from Carrier Corp., an entity that is heavily engaged in interstate commerce. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein. *Bell Glass*, 293 NLRB 700, 701 (1989); *enfd.* 983 F.2d 1073 (7<sup>th</sup> Cir. 1992); *Major League Rodeo*, 246 NLRB 743, 745 (1979); *Strand Theatre*, 235 NLRB 1500, 1501 (1978).

3. The Petitioner has negotiated collective-bargaining agreements with various employers and processes grievances on behalf of the employees it represents. Employees participate in the Petitioner's activities, such as general membership and bargaining strategy meetings. I therefore find that employees participate in the Petitioner's affairs and that the Petitioner exists for the purpose, in whole or in part, of dealing with employers concerning employees' terms and conditions of employment. Moreover, in previous cases the Board has recognized the Petitioner as a labor organization within the meaning of Section 2(5) of the Act. *Sheet Metal Workers Local 19 (Delcard Associates)*, 316 NLRB 426, 427 (1995), *enf. denied* in part on other grounds, 154 F.3d 137 (3d Cir. 1998); *Stalwart Association*, 310 NLRB 1046, 1055 (1993). Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Mfg.*, 136 NLRB 850, 851-52 (1962).

4. There is no evidence of any history of collective bargaining with this Employer or of any contract bar. The Petitioner claims to represent certain employees of the Employer, and the Employer has not agreed to recognize the Petitioner as the exclusive representative of these employees. Accordingly, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit of the Employer's HVAC mechanics and helpers, excluding the estimator and office manager.<sup>6</sup> The Employer's mechanics and helpers are properly included in the same unit. Thus, the mechanics and helpers report to the shop each workday to clock in and receive their work assignments and come back to the shop at the end of each day to return the company vehicles and clock out. During the workday, the helpers regularly work alongside the mechanics on projects in the field. While Mann generally works in

---

<sup>6</sup> In addition to the Employer's owner, the Petitioner would also exclude truck drivers, office clericals, personnel employees, supervisors and guards. There is no evidence that the Employer employs any truck drivers, office clericals or personnel employees other than those identified in this decision.

the shop, he also works with other mechanics and helpers at jobsites as needed. Thus, these two job classifications work together, share common working conditions, and have a community of interest. See *Stott Co.*, 183 NLRB 884, 885 (1970).

The unit properly excludes Office Manager Conklin and Estimator Aicher. Conklin is a clerical employee who works in the office and does not use any sheet metal tools. Aicher, who unlike the mechanics and helpers is a salaried employee, bids on jobs, keeps track of company expenses, records employees' working hours, collects the employees' timecards, and prepares bills for customers. He also assigns work to Mann and sometimes relays assignments from Woods to other mechanics. Aicher has his own office in the Employer's front office area and works from about 6:00 a.m. to 4:00 p.m. each day. Thus, Aicher's job functions are significantly different from those of the mechanics and helpers,<sup>7</sup> and he works in a separate location and receives a salary rather than an hourly wage. In these circumstances, I find that he does not share a community of interest with the petitioned-for employees. Accordingly, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time sheet metal mechanics and helpers employed by the Employer, excluding all other employees, estimators, office managers, office clerical employees, guards, and supervisors as defined in the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>8</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Additionally, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.<sup>9</sup>

---

<sup>7</sup> No party contends that Aicher is a supervisor within the meaning of the Act, and there is no evidence that he possesses any supervisory indicia as enumerated in Section 2(11) of the Act. With respect to his assignments to Mann, the record does not establish that he uses independent judgment in making these assignments.

<sup>8</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

<sup>9</sup> *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264(1961), modified in 167 NLRB 1078 (1967).

Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION, LOCAL 19, AFL-CIO**

**LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within seven days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **August 29, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **September 5, 2002**.

Signed: August 22, 2002

at Philadelphia, PA

/s/

\_\_\_\_\_  
SCOTT C. THOMPSON

Acting Regional Director, Region Four

177-3901-0000-0000  
177-3925-2000-0000  
177-3925-4000-0000  
177-4700-0000-0000  
177-5500-0000-0000  
177-8520-0000-0000  
220-5014-0000-0000  
220-5028-0000-0000  
440-1760-9167-8233  
712-5028-7570-3900

lym:\H:\R04COM\Decision Writing\Jurisdiction\IveyAirRC20476DDE.doc